

definition should be treated as private.^{42/} The Commission should embrace this interpretation.

**IV. THE COMMISSION SHOULD CLASSIFY MOBILE SERVICES AS
COMMERCIAL OR PRIVATE ON A SERVICE-BY-SERVICE BASIS.**

A number of commenters urged the Commission to adopt a broad definition of commercial mobile service that would include MSS and many other mobile services.^{43/} In its Comments, TRW suggested that an ad hoc, service-by-service approach to the classification of mobile services is the only approach that will

^{42/} Id. (citing Explanatory Statement at 495-96). TRW disagrees with McCaw Cellular Communications and GTE Service Corporation, however, to the extent that those parties ask the Commission to employ customer perception as a test of a service's functional equivalency to commercial mobile service. See Comments of McCaw Cellular Communications, Inc. at 19-20; Comments of GTE at 7-8. As no accurate measure of customer perception is available to the Commission, such a test could only result in the subjective or arbitrary classification of mobile services as of a particular point in time (i.e., before customer perception shifts).

^{43/} For example, the California Public Utilities Commission urges the Commission to treat all PCS and any other mobile services as commercial mobile services "in order to simplify enforcement." Comments of the People of the State of California and the Public Utilities Commission of the State of California ("California P.U.C.") at 3. See also Arch at 4 (Commission should "eschew definitions based upon subtle technical differences in system configurations and service offerings that are likely to change over time as technology and network architectures advance").

create the healthy, competitive market for mobile services that the Commission wishes to foster.^{44/}

The differences among the mobile services are not "subtle" and "technical" but real and vital, because the services do not all seek to provide the same benefits and the providers do not all compete for the same customers or the same capital. Although a case-by-case approach may take more time when a service initially is established, an overly prophylactic rule would only stifle competition by imposing excessive regulatory burdens on new services before they can become effective players in the mobile services marketplace. It would also raise the potential for inequitable treatment as waivers are sought and granted for particular offerings.

TRW also urges the Commission to apply no single regulatory classification either to PCS or to MSS/RDSS, but rather to allow providers of both services to choose whether to provide commercial or private mobile service regardless of frequency assignment. As the Commission observed, PCS may potentially provide "a diverse array of mobile services, which could include applications that are not interconnected to the public switched network or are not offered to a substantial

^{44/} TRW at 26 & n.51.

portion of the public."^{45/} Similarly, while satellite system licensees who sell space segment capacity to mobile satellite service providers should be classified as providing private mobile service, they also may wish to provide some service directly to end users on a commercial mobile service basis. The Commission should not restrict the potential diversity of applications in PCS or MSS/RDSS in the name of administrative efficiency.

V. THE COMMISSION SHOULD FORBEAR FROM TITLE II REGULATION OF COMMERCIAL MOBILE SERVICES, PREEMPT ALL STATE REGULATION OF MOBILE SERVICES, AND REQUIRE INTERCONNECTION BETWEEN AND AMONG LECs AND MOBILE SERVICE PROVIDERS.

A. The Commission's Proposal To Forbear From Applying Most Title II Provisions To Commercial Mobile Services Has Overwhelming Support.

The vast majority of the commenters supported the Commission's proposals that it forbear from applying most provisions of Title II to commercial mobile services.^{46/} TRW urges the Commission to use the authority granted it in 47 U.S.C. § 332(c)(1)(A) to determine that Title II is inapplicable to

^{45/} Notice, FCC 93-454, slip op. at 17.

^{46/} Id. at 22-25. See, e.g., Motorola at 17; NABER at 4; Pagemart at 13-16.

commercial mobile services to the fullest extent permissible.

The anticipated level of competition in the MSS/RDSS field makes Title II regulation of this new service area particularly unnecessary.

TRW also supports the Commission's forbearance from applying the requirements of the Telephone Operator Consumer Services Improvement Act ("TOCSIA") to providers of commercial mobile services.^{47/} As Telocator notes in its comments, "[t]he types of abuses involving operator services offerings that TOCSIA was designed to prevent simply have not arisen in the mobile services context."^{48/}

Finally, although the Commission proposed in the Notice to forbear from tariff regulation of the rates for commercial mobile services provided to end users, it did not propose to modify regulation of U.S. international services under Title II.^{49/} In its Comments, Motorola urged the Commission to issue a Further Notice of Proposed Rulemaking in the present proceeding

^{47/} 47 U.S.C. § 226. See Notice, FCC 93-454, slip op. at 25.

^{48/} Comments of Telocator ("Telocator") at 21. See also Motorola at 19 (stating that TOCSIA obligations would "impose significant burdens on carriers without providing any benefits to consumers").

^{49/} Notice, FCC 93-454, slip op. at 23 & n.79.

on the subject of the regulation of international services, and to forbear from regulation of international services.^{50/}

TRW supports the principle being pursued by Motorola, but does not feel a further proceeding is needed. The commenters have presented the Commission with sufficient information on the vigorous nature of competition in the MSS marketplace -- both domestic and international -- for the Commission to decide here to forbear from the regulation of international services.

B. The Commission Should Preempt State Regulation Of The Right To, Type Of, And Rates For Intrastate Interconnection Of MSS/RDSS To Local Exchange Carriers.

The commenting parties offered a variety of views on the degree to which the Commission should preempt state regulation of the right to, type of and rates for intrastate interconnection of commercial mobile services to local exchange carriers. TRW continues to advocate preemption of such provisions for all commercial mobile services,^{51/} but takes no position on the service-specific claims of other parties.

At a minimum, however, the Commission should preempt such state regulation for MSS/RDSS. MSS/RDSS requires access to

^{50/} Motorola at 17.

^{51/} See TRW at 34-37.

the end user via LEC facilities in order to compete effectively against other mobile services. If states are permitted to control the right to and type of interconnection with LECs, the Commission will no longer be able to ensure interconnection to the interstate network. Furthermore, compliance with inconsistent state rate regulations regarding interconnection rates would only inhibit the growth of an inherently interstate and international service such as MSS/RDSS. As MSS/RDSS is a new service with no established providers, there is no danger that preemption of state regulation would create inequities between competitors.

TRW urges the Commission to take a dim view of the dire warnings of NARUC and the individual state public utility commissions that federal preemption of such state regulations is "premature."^{52/} Although the anti-preemption stance taken by NARUC and its constituent members is understandable, the fact remains that the "federal goal" of promoting a healthy and

^{52/} See, e.g., Initial Comments of the National Association of Regulatory Utility Commissioners ("NARUC") at 21; California P.U.C. at 9. California P.U.C. argues that federal preemption may be unwarranted because "[s]tates may . . . require local exchange companies to make available switching, transport or other technically feasible capabilities or arrangements which go beyond federal requirements." Id. It contends that "[t]o the extent that state interconnection arrangements promote federal goals, they should not be preempted." Id.

competitive mobile services marketplace cannot be served by a patchwork of state regulations that make an inherently interstate service such as MSS/RDSS impossible to operate.

C. The Commission Should Require Mobile Services Providers To Interconnect With One Another.

Many commenters agreed with TRW that the Commission should order physical interconnection between commercial mobile service providers and other mobile services.^{53/} Others contended that such interconnection would not be in the public interest.^{54/} Those opposing interconnection claimed that mandatory interconnection would only duplicate the interconnection available through LECs, and would be unnecessary since mobile service providers do not have a "local bottleneck monopoly" and therefore do not present an anticompetitive threat to one another.^{55/}

The objections asserted by opponents of mandatory interconnection are unavailing. Under any system of mandatory interconnection among mobile service providers, a carrier would

^{53/} See, e.g., MCI Comments at 7; Pacific Bell and Nevada Bell at 19-20.

^{54/} See, e.g., Comments of New Par ("New Par") at 11; Comments of Illinois Valley Cellular RSA 2 Partnerships at 2.

^{55/} New Par at 11-12.

be permitted to deny interconnection for reasons of technical infeasibility or incompatibility. Inadequate capacity would certainly qualify as legitimate grounds for the denial of access.

By contrast, the benefits to be gained from an interconnection requirement are substantial. Interconnection will further the Commission's stated goal of universality of service^{56/} by permitting the more rapid deployment of service to the greatest possible number of consumers.^{57/} In addition, interconnection will speed the provision of new and innovative services to the public by affording each new service a greater area of dissemination than it would otherwise have. TRW therefore urges the Commission to impose mandatory interconnection on all mobile service providers who are currently able to provide such interconnection.^{58/}

^{56/} See Amendment of the Commission's Rules to Establish New Personal Communication Services, FCC 94-451, slip op. at 4-5 (released October 22, 1993).

^{57/} See Pacific Bell and Nevada Bell at 19-20.

^{58/} The Commission should not, however, require MSS/RDSS system operators to provide such interconnection to terrestrial mobile service providers at this time. Such a requirement could inhibit the development of the market for MSS/RDSS and limit system operators' flexibility to adjust to its demands. See TRW at 36 & n.72.

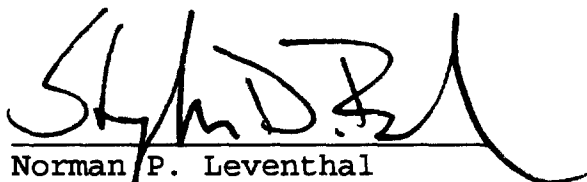
VI. CONCLUSION

On the basis of the foregoing discussion, the Commission should implement new Sections 3(n) and 332 of the Act in the manner proposed in TRW's initial Comments.

Respectfully submitted,

TRW Inc.

By:

A handwritten signature in black ink, appearing to read 'N. P. Leventhal', written over a horizontal line.

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